

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

HOWARD MACK

§

v.

§

CIVIL ACTION NO. 5:14cv98

JASON SMITH, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Howard Mack, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

In August of 2014, Mack was ordered to pay an initial partial filing fee of \$16.68, pursuant to 28 U.S.C. §1915(b). When he did not do so, the Magistrate Judge issued a Report recommending dismissal without prejudice for failure to prosecute. Mack filed objections stating he believed the fee would be automatically sent to the court by the prison facility. He added he was under the assumption the money would be automatically deducted from his account and complained the Clerk of Court has not provided him with a consent form to allow deductions.

The Magistrate Judge thereupon issued an order noting the previous order assessing the filing fee made Mack aware he was responsible for timely payment of the initial partial filing fee. Mack was advised the Eastern District of Texas does not automatically deduct funds from prisoners' trust accounts and does not furnish litigants with the forms required by prison authorities to withdraw money from inmate accounts. These forms are available in the law library and are routinely used by prisoners pursuing legal claims in federal court. The Magistrate Judge gave Mack until March 24,

2015, to pay the initial partial filing fee or show good cause for his failure to do so. Mack received a copy of this order on February 20, 2015, but has not complied.

The Magistrate Judge's Report determined Mack failed to prosecute his case or to obey an order of the Court. Mack has had more than ample time in which to pay the initial partial filing fee or show good cause for his failure to pay, but has not done so.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which the Plaintiff objected and has determined the Report of the Magistrate Judge is correct and the Plaintiff's objections are without merit. *See* 28 U.S.C. §636(b)(1) (district judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") It is accordingly

ORDERED the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 6) is ADOPTED as the opinion of the District Court. It is further

ORDERED the above-styled civil action is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. The incidents forming the basis of the lawsuit began in December of 2013, giving Mack ample time to re-file his lawsuit, should he choose to do so, within the two-year limitations period. It is further

ORDERED any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 3rd day of November, 2015.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE